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ABSTRACT

The Supreme Court's decision in "Lau v. Nichols," Title VII of the Elementary and Secondary Education Act, and other related federal legislation are all directed toward promotion of equal educational opportunity for children whose primary language is not English. These efforts are not well-coordinated by the federal agencies charged with overseeing bilingual educational opportunity programs, which are rarely either well-defined or well-monitored. A coordinated effort must be structured and jurisdiction assigned to appropriate agencies before the final details of an articulated program of cooperation can be worked out. First, funding sources should be connected under a single official, so that the various efforts are no longer seen as mere additions to other programs. Second, funding eligibility criteria relating to the "Lau" decision should be developed for districts seeking Title VII funds. Third, some requirements for receiving funds should be placed on the states. Fourth, federally funded bilingual resource centers should be more closely regulated and coordinated. Finally, clear, definitive guidelines for compliance with the "Lau" decision, taking into account types of assistance available, should be established and resources for monitoring and enforcement provided. (Author/PGD)

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Title VII ESEA and Lau v. Nichols Compliance: Towards an Articulated Approach

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The aims of the Lau v. Nichols decision and Title VII of ESEA appear to be one and the same: to promote equality of educational opportunity to language-minority children through school programs which are compatible with the language characteristics of those children and their families. Title VII programs predate Lau by several years but the court decision is now four and one-half years old. From all appearances there has been adequate time to converge these two thrusts into a unitary and impactful policy structure on the part of the federal government. This has not yet occurred. The aim of this paper is to explore some of the reasons for this lack of concordance and subsequently, to suggest some steps which may help to bring it about. Since there are other pieces of federal legislation which promote and fund bilingual education, an attempt will be made to indicate several ways in which these too may be incorporated into a national Lau-compliance effort. The main emphasis, however, will be on Lau enforcement and Title VII, ESEA, programming, the two most visible and potentially far-reaching initiatives to date.

Two key issues motivate this analysis. First, there is no firm policy within DHEW regarding the fundability of Title VII projects in school districts which are potentially or patently non-compliant with Lau at the time that their funding proposals are considered by USOE. This may occur in those cases where OCR/DHEW either has not reviewed a district for Lau compliance or where a review has been conducted which reveals that compliance has not yet been achieved. The second issue is a corollary to the first: an ill-defined coordination between OCR/DHEW (which determines Lau compliance), and the entities within HEW which fund local projects. This shortcoming is puzzling since the programs funded by these offices are/could be central to an LEA's total compliance posture. The potential therefore exists, for one arm of DHEW to chastise school districts for not conducting programs which are concordant with the intent of Lau, while another arm awards grants for programs which purport to exemplify the responses called for in the decision. Similary, the lack of coordination could result in the removal of funds, say by Title VII, which a district is using to achieve a compliance capability.

Roots of the problem: the legislation

The legislative history of Title VII, ESEA (and its subsequent renewals in 1974 and 1978), reveals a broad spectrum of views regarding the roles and functions which Title VII grants might be expected to carry out. Over the years since the first hearings were held in 1967, witnesses and other interested parties have advocated one or another (or more than one) of several possible uses of Title VII funds:

1. for developing pilot and demonstration programs where the education community may observe viable educational approaches for bringing about linguistic compatibility between schools and students;

2. capacity-building grants to increase the capabilities of schools and teachers to instruct language-minority children with greater effectiveness and efficiency;

3. development of support services and materials to provide greater quality to the programs in LEA's;

4. formula-grant entitlements which would be given to states and local education agencies for the design and operation of their own particular types of programmatic responses;

5. non-compliance grants which would be given to schools after they have demonstrated an inability to comply with Lau absent external resources;

6. compliance-initiative awards for districts which are attempting to comply with Lau with their own resources and expect to be rewarded for their leadership and commitment.

There are other views regarding possible uses for Title VII funds. Advocates of one or another of these foci offer powerful arguments for their particular versions of reality and their visions of Title VII impact on future programs. It seems clear that no one single approach can be expected to serve adequately all language groups, in all parts of the country, at all grade levels, in urban and rural settings, etc. Flexibility is not only advisable but in fact, imperative.

Until 1974, Title VII funds were awarded for all of these purposes. After Lau, however, the last two purposes have become visibly contradictory since the mandate of the High Court places the burden of program development on local districts and does not prescribe a fiscal role for the federal government. In short, while no policy deterent exists in

Title VII, ESEA, to prevent the funding of recalcitrant or impecunious districts, neither does the legislation encourage a funding policy of this type. In other federally funded programs, notably ESAA, a district must be "cleared" by OCR before a grant is awarded. Because the Title VII, ESEA legislation is silent on this point, the remedies must come from the administrative structures and policies of DHEW which are most directly involved with enforcement and program development.

Roots of the problem: DHEW structures and policies

In the present USOE/DHEW structure, the enforcement of non-discrimination laws and compliance regulations rests with the Office for Civil Rights of DHEW (OCR/DHEW). The Office of Bilingual Education (OBE) within USOE is in turn, the largest of several offices which disburse funds for the development and operation of programs through which school districts may improve services to Lau-type children. Under the terms of the 1974 amendments to ESEA legislation,

a consolidation of bilingual education efforts is mandated.* It should be remembered, however, that not all of the funds which are available for special language programs flow through OBE or even DHEW. Other entities include:

1) The Equal Educational Opportunity Program which administers programs under the Emergency School Aid Act (ESAA), and Title IV of the Civil Rights Act of 1964. In bilingual education, the most important of these are the nine (9) Lau Centers (formally General Assistance Centers-Type B), and the ESAA bilingual set-aside;

2) The Title I office which administers funds for the education of the disadvantaged, many of whom are from language-minority groups;

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*Section 731 of the 1974, ESEA amendment states:

"There shall be in the Office of Education an Office of Bilingual Education...through which the Commissioner shall carry out his functions relating to bilingual education. The office shall be headed by a Director of Bilingual Education appointed by the Commissioner to whom the Commissioner shall delegate all delegable functions relating to bilingual education. The office shall be organized as the Director determines to be appropriate in order to enable him to carry out his functions and responsibilities effectively." (20 U.S.C. 880b et.seq.)

3) The Administration for Children, Youth, and Families and its Headstart Program (Some 15% of all Headstart children are Hispanic);

4) The Bureau of Indian Affairs.

There are a number of other agencies and funding sources. In 1975, it was estimated (U.S. Office of Education, Region VI) that "the theme (of bilingual education and equal educational opportunity), permeates amendments to more than 20 pieces of related legislation enacted by Congress over the past quarter century." The administrative articulation of all of these programs is so overwhelming that it has never been attempted even within those programs which are entrusted to USOE.* The above-cited analysis (USOE, Region VI), which focuses only on P.L. 93-380, (ESEA) lists five "areas" where issues of articulation tend to cluster: continuity, communication, cooperation, coordination, and compliance. (p. 2) Unless the "consolidation" provision of ESEA is removed in 1978, a major reorganization of

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* John Molina, former director of OBE, testified in Congress in 1977 about the existence of a bilingual coordinating council in USOE which "meets periodically to exchange information, to look at the directions we are taking and to develop position papers." (U.S. Congress, 1977)

bilingual education functions within USOE will most probably occur in the near future. In this restructuring, the Office of Bilingual Education should emerge as the focal point of bilingual education activities within DHEW.

For purposes of this paper, the most crucial issue related to structure and policy within DHEW may well be the absence of a clear interpretation by OCR/DHEW as to what constitutes operational compliance with Lau both generically and in the different settings in which the law applies. To date, the one definition which has been attempted by OCR took the form of "guidelines" issued in 1975.* This effort, commonly referred to as the "Lau Remedies", has not been vigorously enforced. There are several reasons for this (NABE, 1978). One of these could be the high degree of specificity which the document contains. This specificity makes the "Lau Remedies" somewhat awkward to monitor efficiently and restricts their adaptability to local situations

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*Department of Health, Education, and Welfare. Office for Civil Rights. Task Force Findings Specifying Remedies Available for Eliminating Past Educational Practices Ruled Unlawful Under Lau v. Nichols. Summer, 1975.

which may have been unforeseen at the time the guidelines were drafted. While it is not within the province of this paper to analyze the "Lau Remedies" in detail, the existence of a viable policy statement of this type is basic to our purposes. In Lau, the Supreme Court reaffirmed that the government has the right "to fix the terms on which its money allotments to the States shall be disbursed." It also noted that in its clarifying guidelines of 1970 (35 Fed. Reg. 11595), the Department of HEW did not surpass the limits of that power. In that document, OCR specified that notices to parents "in order to be adequate may have to be provided in a language other than English." One implication of this is that OCR may have the power to specify certain conditions under which instruction in the home language may be proper and/or necessary. A similar right of prescription is provided by the Civil Rights Act of 1964 which makes unlawful the denial of benefits on ground of national origin. (42 U.S.C. 2000d, 2000d-1) This notwithstanding, there is some uncertainty about one point: the degree to which OCR/DHEW may prescribe bilingual education as a sole and sufficient remedy. Two factors would act against such a prescription; one, that it may not be a sufficiently

comprehensive remedy and two, the suggestion by the High Court in Lau that a variety of program options are probably available.* A justification for a strong OCR directive, however, seems to be implicit in the Court's recognition that "there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum..." Teachers and curricula which are bilingual seem to provide the degree of differentiation envisioned by the Supreme Court. It could be assumed therefore, that an important component of a federally prescribed Lau response program could take the form of bilingual instruction. Taken together, these factors provide solid grounds for a collaborative effort between OCR and OBE in the formulation of Lau policies. Already school districts that are in violation of Title VI of the Civil Rights Act of 1964, jeopardize their eligibility to receive ESAA-bilingual funds. This additional fact provides an antecedent for close collaboration between

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* In that decision (Lau v. Nichols, 414 U.S. 563, 1974), the court noted that: "Teaching English to the students of Chinese ancestry is one choice. Giving instructions to this group in Chinese is another. There may be others."

the two offices since a clear and workable precedent exists.

A suggested approach to the problem.

The difficulties and needs outlined above suggest that the goal of articulation and cooperation between the several offices may involve a long and complicated process. And while it is not our purpose to suggest the exact configuration of the final outcome, several preliminary steps may be easily envisioned. These in turn, would lead the way for resolving more complex issues of structure, jurisdiction, and perhaps changes in applicable legislation.

Initially, the following steps seem plausible and necessary:

A. A workable structure for connecting OBE, OCR, and other funding sources should be expeditiously established. To delay this step would exacerbate existing disjunctures even more. Because the level of decision and policymaking is of a high nature, the Department of HEW should designate a high-ranking official to orchestrate all of the programs which are designed to serve language minority populations. The

coordination of policy would be more probable once a locus of accountability is established. The magnitude of the task indicates the need for a task-specific structure rather than the addition of this function to an existing instrumentality. The entire articulation activity should be undertaken with a view to incorporating the revised structures into the recently proposed (cabinet-level) U.S. Department of Education. When the new department is formed, it is not unrealistic to conceive of an Assistant Secretary for Language Minority Policies and Programs.

B. Immediate steps should be undertaken to, at a minimum, develop funding eligibility criteria relating to Lau, for those districts seeking Title VII funds. A reasonable posture in this regard would be that renewal grants under Title VII be contingent upon a clearly demonstrable movement towards Lau compliance which is undertaken through local and state funds.

C. Because state departments of education bear great responsibility for local programs, some requirements for receiving federal bilingual funds should be placed on states, particularly, those having large concentrations of

children from other-than-English home environments. Care should be taken, however, to balance need with effort, while due cognizance is taken of other factors which may deter states and municipalities from taking decisive steps to meet their responsibilities under Lau. The overall goal here would be to maximize state capabilities at the same time that responsibility is shared between local and state agencies on the one hand and the federal government on the other.

D. Bilingual resource centers which are funded by Title VII, ESEA, and General Assistance Centers (Type B), funded through the Equal Educational Opportunities Program, should be more closely regulated to ensure concordant, impactful, and non-overlapping functions. As coordination mechanisms are developed or improved, a similar effort for improving the delivery of bilingual services should occur with other funded projects, e.g., ESAA, and Title I.

E. The Office for Civil Rights/DHEW should be strongly encouraged to issue clear, definitive guidelines for meeting the intent of Lau and clarifying the obligations of state and local agencies in this regard. These guidelines should evolve out of an articulated process which takes into

account the types of assistance which may be made available by the different sources of funding, e.g., desegregation and bilingual education. In addition, adequate resources for the monitoring and correction of local Lau efforts should be made available. Finally, the priority which OCR gives to Lau enforcement activities should become more assertive and visible in order to make more convincing the resolve of the federal government to carry out its own responsibilities under Lau.

References

Bilingual Education Act of 1974 (20 U.S.C. 880b et. seq.)

Civil Rights Act of 1964 (42 U.S.C. 2000d, 2000d-1)

Department of DHEW, Office for Civil Rights. Task Force Findings Specifying Remedies Available for Eliminating Past Educational Practices Ruled Unlawful Under Lau v. Nichols. Summer, 1975.

Lau v. Nichols (414 U.S. 563, 1974)

"NABE Talks to OCR About Lau." Journal of the National Association for Bilingual Education, Vol II, No. 1, January, 1978.

References cont'd

U.S. Congress. House. Committee on Education and Labor. Part 3: Bilingual Education, Hearings Before the Subcommittee on Elementary, Secondary, and Vocational Education on H.R. 15, 95th Congress, First Session, 1977.

U.S. Office of Education Region VI, "Bilingual Education in P.L. 93-380," March 13, 1975 (Mimeo).

35 Fed. Reg. 11595